IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No.282 of 2006.
Date of decision: 05.07.2007

Surinder Singh & Others …**Appellants**

Versus

Jaisi alias Barfo & Others …**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellants: **Mr.Janesh Mahajan, Advocate.**

For the Respondents: **Mr.R.K. Gautam, Senior Advocate with Mr.Naveen K.Bhardwaj, Advocate.**

Dev Darshan Sud,J.

This appeal has been preferred by the defendants against the judgments of the learned two Courts below, whereby the suit of the plaintiff-respondent for redemption of mortgage has been decreed by the trial Court. An appeal, carried to the learned District Judge, was also dismissed.

The learned trial Court, on the basis of the averments made in the plaint, passed a decree in favour of the plaintiff for redemption of mortgage of the suit land alongwith the possession subject to the payment of mortgaged amount of Rs.450/- by the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

plaintiff to defendants 1 to 6 within a month from the date of passing of the decree.

The judgment was challenged in an appeal which affirmed the correctness on facts by the learned trial Court and dismissed the appeal filed by the defendants. One of the grounds taken before the learned appellate Court was that defendant No.2 Vijay Raj was a minor at the time of filing the suit and had not been properly sued and that the suit was not properly constituted. Both the learned Courts below, have dealt with this aspect of the matter holding that on the day this respondent was served, he was a major and was represented by Shri V.K. Gupta, Advocate, who had filed his memo of appearance.

Learned counsel for the appellants has urged that the suit has not been properly constituted as defendant No.2 was a minor and no decree could have been passed against him. I do not find any substance in this submission of the learned counsel as on the date of service, he attained majority and in-fact counsel had appeared on his behalf. This is a finding of fact which cannot be reversed in appeal.

On substantial question of law No.1, which the learned counsel urges for consideration of this Court, I find that the matter having already been settled by the learned Courts below as a question of fact, which cannot be described as perverse or without evidence, cannot be interfered with in second appeal.

This appeal is, accordingly, dismissed. There shall be no order as to costs.

July 5, 2007
(aks)

(Dev Darshan Sud)
Judge.